

BOARD OF COUNTY COMMISSIONERS
Agenda Item Summary

Meeting Date 9/15/04

Division **County Attorney**

AGENDA ITEM WORDING

Approval of settlement agreement in *David Tuttle, et al. v. Monroe County*. .

ITEM BACKGROUND

David Tuttle, Peter Rosasco, Shelley Pitman, and Harley Evans filed a two count action against the County seeking 1) a writ of mandamus to compel the County to issue building permits for 4 lots on Big Pine Key and 2) damages for inverse condemnation. The Plaintiffs have proposed a settlement wherein the County would issue the permits in exchange for a waiver of their respective claims for damages.

PREVIOUS RELEVANT BOCC ACTION

Board approved a similar settlement in *John Clay et al v. Monroe County*, on April 21, 2004.

CONTRACT/AGREEMENT CHANGES: n/a

STAFF RECOMMENDATIONS

Approval.

TOTAL COST

BUDGETED Yes No

COST TO COUNTY

SOURCE OF FUNDS

APPROVED BY: County Attorney ■ OMB/Purchasing Risk Management

DIVISION DIRECTOR APPROVAL:

 08/31/04
JOHN R. COLLINS

DOCUMENTATION: Included xx

AGENDA ITEM # _____

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In the Circuit Court of the 16th Judicial Circuit
In and for Monroe County, Florida
Middle Keys Civil Division

DAVID TUTTLE, PETER ROSASCO,
HARLEY EVANS, AND SHELLEY PITMAN,

Petitioners,

v.

Case No. 04-CA-243-M

MONROE COUNTY, FLORIDA,
A political subdivision of the
State of Florida,

Respondent

SETTLEMENT AGREEMENT

COMES NOW the Petitioners, DAVID TUTTLE, PETER ROSASCO, HARLEY EVANS, AND SHELLEY PITMAN, and the Respondent, MONROE COUNTY, a political subdivision of the State of Florida, and file this their Settlement Agreement and state as follows:

WHEREAS each of the Petitioners are owners of a residential lot in Big Pine Key, Florida; and

WHEREAS each of the Petitioners is desirous of building a single family home on their lot; and

WHEREAS each of the Petitioners has applied for and paid for, and received approval for the issuance of a permit for a single family home on their lot in Big Pine Key; and

WHEREAS as a result of concurrency standards imposed by the State of Florida, the Respondent's concerns over traffic generation that may be caused by the construction of these homes resulted in the Respondent's decision to not issue the Petitioners' permits; and

WHEREAS the Respondent initiated an administrative proceeding under the Beneficial Rights proceedings of Section 9.5-171 of the Monroe County Land Development Regulations in regards to the Petitioners' permits; and

WHEREAS, the Beneficial Use hearing officer issued a proposed determination which found that the Petitioners' impact from building a single family home on their residential lots in Big Pine Key would have *de minimus* effect on the concurrency requirements that had been imposed on Monroe County, and recommended that the permits be issued to the Petitioners; and

WHEREAS the Respondent, by actions of the Board of County Commissioners, accepted the finding of the Special Master's Beneficial Use determination with respect to Petitioners DAVID TUTTLE, PETER ROSASCO, AND SHELLEY PITTMAN by Resolution #263-2002, dated June 19, 2002; and

WHEREAS the Respondent, by actions of the Board of County Commissioners, accepted the finding of the Special Master's Beneficial Use determination with respect to Petitioner Harley Evans by Resolution 278-2003 on July 15, 2003; and

WHEREAS the Petitioners have initiated these proceedings to obtain the permit that is the subject of the Beneficial Rights determination and Resolution #263-2002; and

WHEREAS the parties desire to amicably resolve all issues between them relating to this litigation; and

WHEREAS the parties further agree that it is in the best interest of the parties to terminate the litigation, to allow the Petitioners to build their single family homes, to buy peace in the matter, and to avoid further expense and delay that may be attendant upon this litigation.

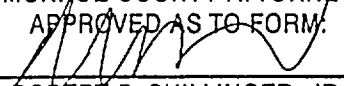
NOW THEREFORE in consideration of the mutual covenants and conditions contained herein and for other good and valuable consideration the receipt and sufficiency of

which are hereby acknowledged, the parties agree to settle the instant proceedings as follows:

1. Each of the Petitioners has applied for, paid for, and received approval for the construction of a single family home on their respective lots in Big Pine Key, Monroe County, Florida, and such approval is currently in effect.
2. The Monroe County Building Department shall issue to Petitioners DAVID TUTTLE AND PETER ROSASCO a building permit to construct one single family home on Lots 32 and 33, Doctors Arm Subdivision, 3rd Addition, Section C, Big Pine Key, Florida.
3. The Monroe County Building Department shall issue to Petitioner HARLEY EVANS a building permit to construct a single family home on Lot 42, Block 24, Eden Pines Colony, Big Pine Key, Florida.
4. The Monroe County Building Department shall issue to Petitioner SHELLEY PITMAN a building permit to construct a single family home on the parcel described in the warranty deed recorded in the official records of Monroe County at Book 2025, page 1290, which was attached to the first Amended Petition in the instant matter as Exhibit A and incorporated therein.
5. Upon the issuance of the permits to the Petitioners, the Petitioners shall have all the rights, responsibilities and duties that the Monroe County Code and Land Development Regulations grant to builders of single family homes in Monroe County, Florida.
6. Upon the conclusion of the process for the issuance of the above-referenced permits and the expiration of the period for the Department of Community Affairs to review the Petitioners' permits, the Petitioners shall file a notice of voluntary dismissal with prejudice of the above-styled action.

7. By entering into this agreement, the parties agree to waive and release any claims that were raised or could have been raised in this litigation. After approval of this agreement by the Court, all parties shall exchange mutual releases in a format customarily used in this County. All parties acknowledge there is other litigation, presently on appeal between some of these parties and this Agreement is not intended, nor shall it be construed to, waive any rights in any other pending litigation or appeal.
8. Each party shall bear its own attorney's fees and costs in connection with this litigation. In the event it becomes necessary for any party to this litigation to commence legal proceedings to enforce the terms of this agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs in connection with such action.
9. By entering into this Settlement Agreement, the parties do not acknowledge the merits or lack of merits of these proceedings. Rather, the parties have entered into this agreement for the purpose of avoiding further expense and delay inherent in litigation of this nature.
10. The Court shall retain jurisdiction over the parties to the subject matter of these proceedings, and shall enter any orders or judgments which are just, lawful, and appropriate under the circumstances.

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MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:

ROBERT B. SHILLINGER, JR.
ASSISTANT COUNTY ATTORNEY
Date 8-31-09

Franklin D. Greenman, Esq. (Date)
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